IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 17697 of 2000

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WRIT PETITION NO : 23543 of 2000

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WRIT PETITION NO : 17697 of 2000

Between:

T.S.N.Raju, S/o. Late Sri Appala Narasimha Raju,
O/o.Chief Engineer(Civil),Visakhapatnam Port Trust, Port Area,

Visakhapatnam, R/o. Visakhapatnam.

..... PETITIONER

AND

1 The Board of Trustees, Visakhapatanam Port Trust,
Port Area,Visakhapatnam.
2 The Chairman, Visakhapatanam Port Trust Port Area,
Visakhapatnam.
3 The Chief Engineer, Civil Engineer Department, Visakhapatanam Port Trust
Port Area,Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus (i) declaring the action of the respondents in not accepting the offer of the

Writ Petitioner to retire from the service of the Visakhapatnam Port Trust on voluntary retirement basis as unjust and illegal; and (ii) Consequently direct the respondents to treat the Writ Petitioner to have retired from its service on voluntary retirement basis with immediate effect by extending all the terminal benefits that flow there from.

Counsel for the Petitioner:MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.1 to 3: MR.K.SRINIVASA MURTHY

WRIT PETITION NO : 23543 of 2000

Between:

R. Rama Rao S/o.Suryanarayana,
O/o.Chief Engineer (Civil), Visakhapatnam Port Trust,
Port Area, Visakhapatnam, R/o.Visakhapatnam.

..... PETITIONER

AND

1 The Board of Trustees,
Visakhapatnam Port Trust, Port Area,
Visakhapatnam.
2 The Chairman,
Visakhapatnam Port Trust, Port Area,
Visakhapatnam.
3 The Chief Engineer, Civil Engineering Department,
Visakhapatnam Port Trust, Port Area,
Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of Mandamus (i) declaring the action of the respondents in not accepting the offer of the writ petitioner to retire from the service of the Visakhapatnam port Trust on voluntary retirement basis as unjust and illegal; and (ii) Consequently direct the respondents to treat the writ petitioner to have retired from its service on voluntary retirement

basis with immediate effect by extending all the terminal benefits that flow there from.

Counsel for the Petitioner:MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.1 to 3: MR.K.SRINIVASA MURTHY

The Court made the following :

COMMON ORDER:

These two writ petitions are filed seeking *Mandamus* declaring the action of the respondents in not accepting the offer made by the petitioners to retire from the service of the Visakhapatnam Port Trust on Voluntary Retirement basis as per the scheme (for short 'VRS').

It is the case of the petitioners that while they were working with the Visakhapatnam Port Trust, the Ministry of Surface Transport, Government of India in its communication No.LB-16016/7/88-L.II, dated 29.8.1991 addressed to the Chairman, Visakhapatnam Port Trust, has granted the necessary permission to introduce VRS in the Visakhapatnam Port Trust subject to the conditions as specified thereunder. All the employees who have completed 10 years of service or 40 years of age were entitled to seek VRS by a written request. The petitioners have submitted their applications seeking VRS and the benefits thereunder. The Financial Advisor, Chief Accounts Officer and the Deputy Chairman have accorded their approval as well. The Vigilance Scrutiny has revealed that the petitioners have a clean case all through and therefore, there is no objection on principle for their retirement. It is the

case of the petitioners that the Chairman though accorded permission to several employees to go on VRS, has not passed any orders in the case of the petitioners and they were informed that their cases are still under examination. In fact, orders have been issued by the Engineering Department on 31.07.2000 accepting the proposals of VRS in favour of 83 persons, a good number of them have been crossed 57 years of age and hardly 2-3 years of service left for their retirement on superannuation basis. Similarly, the Traffic Manager's Department has also issued orders approving the proposals of eight employees of that Department to go on VRS. Incidentally, eight of them have completed 58 years of age by 31.8.2000. Thus, the case of the petitioners alone was not considered. It is alleged that the management of Visakhapatnam Port Trust is not willing to accord permission for the petitioners to go on VRS since they have completed 58 years as on 1.8.2000. Further it is alleged that the Secretary of the Visakhapatnam Port Trust has also circulated an order dated 23.8.2000 requesting all the heads of department to forward the VRS cases only in respect of the employees who have attained the age of 58 years. Though no orders have been communicated declining to accept the offer of the petitioners to go on VRS, so far it is not clear whether the management is willing or not to permit the petitioners to retire from its service on voluntary retirement basis.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioners. With regard to the contention of the petitioners that VRS has been accepted in respect of 83 persons on 31.7.2000 in Engineering Department and a good number of them have crossed 57 years of age and similarly the Traffic Manager's Department has also issued orders on 31.8.2000 approving 8 employees of the Department to go on VRS, in which 8 persons have also crossed 58 years of aged by 31.8.2000, it is stated that the decision of not considering VRS for the persons, who have crossed 58 years has been taken only on 23.8.2000, whereas, the VRS granted in respect of above 83 persons in Engineering Department and 8 persons in Manager's Department was prior to 23.8.2000. It is stated that the allegation that the respondents have not considered the case of petitioners to go on VRS on par with the other employees due to completion of 57 years, is not correct. Insofar as the petitioner in W.P.No.17697 of 2000 is concerned, it was stated that in the meanwhile, the petitioner was promoted as Assistant Executive by order dated 25.7.2000 on adhoc basis and with effect from 1.8.2000 on regular basis. The petitioner has made a representation on 29.8.2000 addressed to

the Chairman to consider his application dated 27.4.2000 to go on VRS, which was applied while he was in the cadre of C.I.O.W. (Class III). It is stated that this petitioner has not renewed his request after being promoted as Assistant Engineer and further, he was junior most in the promoted cadre of Assistant Engineer.

I have given my earnest consideration to the respective submissions of the learned counsel on either side and gone through the material made available on record.

It is the case of the petitioners that their offer for VRS was rejected only on the ground that they had crossed 58 years of age by 23.8.2000, but the offer of other employees from various departments was accepted though they had crossed 57 and 58 years of age as on 31.8.2000. Though the said fact has been admitted by the respondents in the counter affidavit, it is not asserted that as per the terms and conditions of the very scheme for Voluntary Retirement as envisaged by the Ministry of Surface Transport, Government of India, the petitioners are not entitled for consideration after crossing 58 years of age. Even, no other reasons are forthcoming for rejecting the cases of the petitioners to go on VRS.

In the counter affidavit it is simply stated that the respondents have taken a decision on 23.8.2000 not to consider VRS for the persons who have crossed 58 years, and accordingly since the petitioners have crossed 58 years their cases were rejected. But no authenticated terms or conditions of the scheme are brought to the notice of this Court in support of their case. It is the categorical assertion on the part of the petitioners that the respondents could not have introduced a condition debarring them from availing VRS, which is alien to the scheme. It is also admitted by the respondents that they have allowed more than 90 persons to go on VRS though they have crossed 57 and 58 years of age. In the absence of any condition debarring the consideration of the application offered by the petitioners, the action of the respondents in rejecting the case of the petitioners to go on VRS is arbitrary and illegal.

It is the contention of the learned counsel for the petitioners that though the petitioners were allowed to continue after 60 years and retired on attaining the age of superannuation, the rejection of their offer for VRS has resulted in lot of financial loss since a person, who was allowed to retire voluntarily would be offered 45 days salary for each completed year of service. It is contended that though the petitioners have continued for 24 months thereafter, their entire salary received by them for that

24 months is much less than what they would have got under the VRS. In view of the above circumstances, I am of the considered opinion that not accepting the offer made by the petitioners for VRS is arbitrary and illegal.

Therefore, the respondents are directed to consider and accept the VRS of the petitioners as on their date of application and pass appropriate orders and pay all the benefits thereunder. However, the petitioners are not entitled for pension on the ground that they have retired on attaining the age of superannuation at the age of 60 years and they shall be entitled for pension as per the date of retirement under the Voluntary Retirement Scheme to be extended to the petitioners. However, the salaries received by the petitioners till their age of superannuation shall not be recovered since it was paid as they have worked. The whole exercise shall have to be concluded within a period of three months from the date of receipt of a copy of this order.

The writ petitions are allowed to the extent indicated above. No costs.

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C.V. RAMULU,J

15th JUNE, 2005

Tsr.

To,

1 The Board of Trustees, Visakhapatanam Port Trust,

Port Area,Visakhapatnam.

2 The Chairman, Visakhapatanam Port Trust Port Area, Visakhapatnam.

3 The Chief Engineer, Civil Engineer Department, Visakhapatanam Port Trust Port Area,Visakhapatnam.

4. 2 CD copies.